IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FARAD CONTINUATION SHEET
SECOND APPEAL NO.302 OF 2004

Ramakant Shridhar Deo ...Appellant

Vs.

M/s.Deshpande Builders and Ors. ...Respondents

Mr.J.S.Deo for the Appellant
Mrs.Usha Purohit for the Respondents.

CORAM: A.S.OKA, J.

DATED: AUGUST 9, 2004.

P.C.:

1. Heard the Counsel appearing for the parties. The Appellant is the original Plaintiff. The suit is filed by the Appellant for declaration that consent letter dated 2nd May 1991 and its contents are illegal and null and void and be ordered to be cancelled. The allegation made by the Plaintiff-Appellant was as regards the fraud practised against him. The Appellant has not stepped into the witness box. The son and Power of Attorney holder of the Appellant who stepped in the witness box has admitted that the Appellant was in a position to depose before the Court. No convincing reason is given by the Appellant as to why he did not step in the witness box. Therefore, this was a fit case where adverse inference should have been drawn against the Appellant.

2. The case of the Appellant is that the area of the rented premises is of 3 rooms of 750 sq.ft. and open terrace of 750 sq.ft. and a bathroom on the second floor and W.C. on the first floor. The rent receipt shows that the tenancy was as regards only 2 rooms. The partner of the Respondent No.1 was examined on oath has stated that only two rooms were let out to the Appellant. There is hardly any cross examination made on behalf of the Plaintiffs on the said aspect. If the case of the Appellant was that a larger area than what is mentioned in the rent receipt was let out to him, he should have stepped into the witness box and deposed to that effect. Therefore, no fault can be found with the findings of the Courts below if the case of the Appellant as regards area of the rented premises is not accepted.

3. There are concurrent findings of fact recorded by the Courts below. The findings are neither perverse nor illegal. Hence no substantial question of law arise.

4. Second Appeal is dismissed with no order as to costs.

Judge.